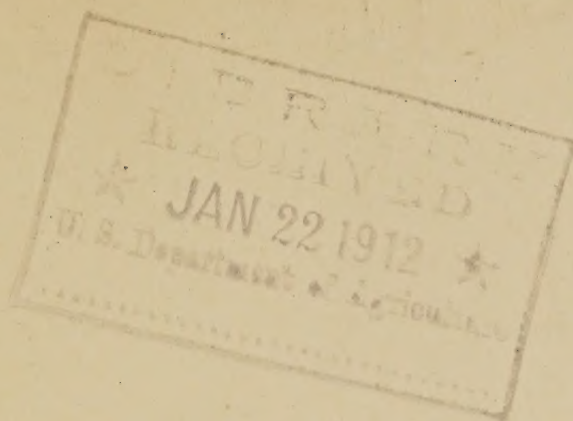


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GEO. P. McCABE, SOLICITOR.

SUPPLEMENT TO
THE TWENTY-EIGHT HOUR LAW
ANNOTATED.

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SUPPLEMENTARY ANNOTATIONS.

CONSTITUTIONALITY.

The Twenty-eight Hour Law is not unconstitutional, as delegating legislative power to the shipper or owner of live stock, in permitting him to extend the time of confinement to thirty-six hours.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

We find no ground for saying that the law as framed by Congress is not complete in itself. No part of it is made by the shipper, nor is he given the option to say that the carrier shall not comply with its provisions.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

PURPOSE.

Although the act in question herein incidentally protects the owners of live stock. its primary and important purpose is to prevent cruelty to animals in transportation.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

The purpose of the statute is remedial, and for humane purposes. One purpose is to prevent the slaughtering of animals for food when in a feverish condition brought about by long confinement without food, water, and rest. But the main purpose is to prevent cruelty to animals shipped.

U. S. v. St. Joseph Stock Yards Co., 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

PARTIES AMENABLE.

A stock yards company owning stock yards at South St. Joseph, Mo., doing what is known as a terminal business, owning and maintaining switch tracks encircling its stock yards and connecting therewith and with trunk line railroads from which it receives and to which it delivers cars, so that all live stock in and out of its stock yards must pass over its lines and switches, and operating for the purpose locomotives with crews of men, issuing no bills of lading and receiving no part of the freight charges paid to the trunk line companies, but charging for each car moved from the connection of the trunk lines to its stock yards or to packing houses, is a railroad company and a common carrier of freight for hire, with the rights, duties, and obligations of a common carrier of freight for hire.

U. S. v. St. Joseph Stock Yards Co., 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

The transportation of the cattle from Wilcox, Nebraska, to the chutes at the stock yards at South Saint Joseph, Missouri, was a continuous shipment, all of which, including the transportation by the defendant over its tracks, was of an interstate character, and all of which was covered by the statute forbidding such confinement more than twenty-eight hours in the absence of the written request to carry them for thirty-six hours.

U. S. v. St. Joseph Stock Yards Co., 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

So, I think, in this case that, although the Terminal Company (Northern Pacific Terminal Co.) did carry this stock but a short distance, it ought to be considered, and will be considered, as a connecting carrier with any other railroad company coming into Portland, and through and by reason of its aid taking stock up delivered to it by other companies centering here, and carried upon delivery to another company, or delivered to the Union Stock Yards.

U. S. v. Northern Pacific Terminal Co., 181 Fed. 879 (1909). Circular No. 30, Office of the Solicitor, Department of Agriculture.

Where shipments of live stock are transported from one State of the United States through a foreign country, and into another State, the carrier handling them within the United States, at the last stage of the journey, is subject to the Twenty-eight Hour Law if at the time it accepts the stock the statutory limit has expired.

U. S. v. Lehigh Valley R. R. Co. et al., 184 Fed. 971 (1911). Circular No. 44, Office of the Solicitor, Department of Agriculture.

Every railroad company forming any part of an interstate line, over which such stock is being shipped, that participates in such carriage beyond the limit, acts in contravention of the law.

U. S. v. Northern Pacific Terminal Co., 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture.

While the Terminal Company was carrying the stock to the stock yards, it was also carrying it over one line of the through line of transportation from Gazelle, California, to Tacoma, Washington, and I find no such exception in the law, that a connecting carrier may carry stock on to stock yards, although the same has been confined beyond the limit of time, for the purpose of releasing such stock. Nor is the Terminal Company excusable in violating the law that it might subserve a humane purpose, unless it be in exceptional cases. The enforcement of the law will be better subserved if connecting carriers will refuse to carry any stock that has been confined in cars by a preceding carrier beyond the time limit. Indeed, as I interpret the statute, they violate the law if they do not so refuse.

U. S. v. Northern Pacific Terminal Co., 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture.

VENUE.

In authorizing an action to be brought in the circuit or district court of the United States within the district where the violation may have been committed, or the person or corporation resides or carries on business, section 4 of the Twenty-eight Hour Law is not

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in violation of the sixth amendment to the Constitution, which guarantees to the accused a trial in the district where the crime has been committed.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 24, Office of the Solicitor, Department of Agriculture.

"KNOWINGLY."

The statute can not be construed of no application because the defendant, the connecting carrier, did not know how long the Burlington Company had the cattle in confinement without food or water. The connecting carrier must learn such fact at its peril. This conclusion is not changed, but it is emphasized by the fact that the defendant did not seek to ascertain such fact.

U. S. v. St. Joseph Stock Yards Co., 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

If the defendant company, being a connecting carrier, as I conclude, knowingly took up the stock and carried it on to its destination, having knowledge that it had already been carried more than thirty-six hours, it would be liable, notwithstanding the Spokane, Portland & Seattle Railway Company had already been prosecuted for the same cause. Each individual carrier which violates the law is liable to the penalty.

U. S. v. Northern Pacific Terminal Co., 181 Fed. 879 (1909). Circular No. 30, Office of the Solicitor, Department of Agriculture.

"KNOWINGLY AND WILLFULLY."

The defendant having received the cattle for the sole purpose of feeding, watering, and resting them, without knowing that they had been confined in the cars exceeding the time allowed by the statute, and having used due diligence in carrying them to the stock yards and unloading them, we do not think it can be said that it either intentionally disregarded the statute or was plainly indifferent to its requirements, and the judgment must be affirmed.

U. S. v. Stockyards Terminal Ry. Co., 178 Fed. 19, 23. (C. C. A., 1910.) Circular No. 33, Office of the Solicitor, Department of Agriculture.

No penalty is incurred by a carrier if it accepts live stock simply for the purpose of unloading them for feed, rest, and water, where they have been already confined beyond the statutory limit, provided the movement of such stock by the carrier is substantially a part of the process of unloading, and not a continuance of the act of transportation.

U. S. v. Lehigh Valley R. R. Co. et al., 184 Fed. 971 (1911). Circular No. 44, Office of the Solicitor, Department of Agriculture.

In addition to the penalty incurred by the initial carrier, any connecting carrier incurs a new penalty if it knowingly and willfully accepts and continues to transport live stock, theretofore confined by the initial carrier beyond the statutory period, without water, feed, or rest.

U. S. v. Lehigh Valley R. R. Co. et al., 184 Fed. 971 (1911). Circular No. 44, Office of the Solicitor, Department of Agriculture.

PERIOD OF CONFINEMENT.

In estimating the time during which live stock have been confined by a connecting carrier, without water, feed, or rest, the period during which they had been so confined, in excess of the statutory limit, by the preceding carrier, at the time of delivery to the connecting carrier, is not to be counted, where the preceding carrier has been already sued for so confining the live stock and has been subjected therefor to the penalty imposed by the act.

U. S. v. Stockyards Terminal Co., 172 Fed. 452 (1909). Circular No. 26, Office of the Solicitor, Department of Agriculture.

And I construe section 2 as not enlarging the time which is given under the first section for loading and unloading. And it does not seem to me that the switching of the animals from one track to the other about the switching yards should be deducted from the time of carriage; but simply that space of time that would be required in putting the animals aboard the car, and in unloading them when it is necessary to unload them—that time shall not be included in the time of carriage.

U. S. v. Northern Pacific Terminal Co., 181 Fed. 879 (1909). Circular No. 30, Office of the Solicitor, Department of Agriculture.

"SHEEP."

We find no substantial ground for holding that the act is uncertain. The meaning of the proviso is that if the twenty-eight hour limit expires in the night, in the case of sheep, transit may be continued to a suitable place for unloading, without the request of the owner or custodian, but that in no case shall the limit of thirty-six hours be exceeded.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

If there has been no extension of time by the owner or person in charge the carrier must unload the sheep within 28 hours unless such 28-hour period expires in the nighttime, when the transit may be continued to a suitable place for unloading, provided such suitable place for unloading can be reached, and the unloading commenced, within 36 hours, it being the clear intention and purpose of the act that under no circumstances shall animals, including sheep, be kept in confinement by the carrier without unloading for rest, feed, and water longer than 36 hours, except as stated in case of storm or accidents. Thus it clearly appears that the period of time referred to as expiring in the nighttime has reference to the 28-hour period, and not to the extended period of 36 hours.

U. S. v. Atchison, Topeka & Santa Fe Ry. Co., 185 Fed. 105. (C. C. A., 1911.)

"PROPERLY EQUIPPED PENS."

The Twenty-eight Hour Law does not require a carrier to maintain any particular kind of equipment of its stock pens, permanent or otherwise, except in so far as to render them suitable for the humane purpose of properly feeding, watering, and resting the particular shipment of stock unloaded into them.

U. S. v. St. Louis, Iron Mountain & Southern Ry. Co., 177 Fed. 205. (C. C. A., 1910.)

UNIT OF VIOLATION.

The question is whether the unit in the case of violation of the act is the carload of live stock, or each individual shipment thereof. We are of the opinion that it is the latter.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 23, Office of the Solicitor, Department of Agriculture.

Regardless of the number of shipments, at any time and place where they are willfully and knowingly confined beyond the lawful period there is a violation of the statute as to the animal or animals then and there in custody for transit in interstate commerce.

The Baltimore & Ohio Southwestern R. R. v. U. S. (Sup. Ct. U. S., 1911.) Circular No. 46, Office of the Solicitor, Department of Agriculture.

ASSESSMENT OF THE PENALTY.

It is the duty of the court to fix the amount of the recovery.

Atchison, Topeka & Santa Fe Ry. Co. v. U. S., 178 Fed. 12 (C. C. A., 1910), Circular No. 36, Office of the Solicitor; *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A., 1910), Circular No. 37, Office of the Solicitor, Department of Agriculture.

EVIDENCE.

A suit under the Twenty-eight Hour Law is a civil action and a preponderance of the evidence in favor of the Government is sufficient to warrant a verdict against the defendant.

Atchison, Topeka & Santa Fe Ry. Co. v. U. S., 178 Fed. 12 (C. C. A., 1910), Circular No. 36, Office of the Solicitor; *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A., 1910), Circular No. 37, Office of the Solicitor, Department of Agriculture.

It is not enough to show that the animals "can" have such supplies, as, for instance, that the one in charge may procure water and food at the stations where stops are made, but it must be shown that the animals "do" have proper food, water, space, and opportunity to rest in the cars, boats, or other vessels where carried.

U. S. v. Chicago, Burlington & Quincy R. R. Co., 184 Fed. 984 (1910). Circular No. 42, Office of the Solicitor, Department of Agriculture.

RULE OF CONSTRUCTION.

An action by the United States to recover from a carrier the penalty imposed by the Twenty-eight Hour Law is a civil action, with all the ordinary incidents thereof, including liability of the defeated party for costs.

U. S. v. Southern Pacific Co., 172 Fed. 909 (1909). Circular No. 28, Office of the Solicitor, Department of Agriculture.

Actions under the Twenty-eight Hour Law are civil actions.

Southern Pacific Co. v. U. S. (C. C. A., 1909.) Circular No. 24, Office of the Solicitor, Department of Agriculture.

A suit under the Twenty-eight Hour Law is a civil action and a preponderance of the evidence in favor of the Government is sufficient to warrant a verdict against the defendant.

Atchison, Topeka & Santa Fe Ry. Co. v. U. S., 178 Fed. 12 (C. C. A., 1910); *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A., 1910). Circulars Nos. 36 and 37, Office of the Solicitor, Department of Agriculture.

THIRTY-SIX HOUR REQUEST.

A legal request for the confinement of live stock, under section 1 of the statute, may be made (1) by the authorized agent of the owner of the particular shipment; (2) such a request may be printed, engraved, or stamped and partly in handwriting; (3) a legal request may be made on or in a railroad form separate and apart from a printed bill of lading or other railroad form than one which contains the request alone; (4) such a request may be made before the transportation of the shipment commences; (5) such a request may be made although it is not induced by any emergency or contingency that arises after the transportation commences and that was unforeseen at that time.

Wabash R. R. Co. v. U. S., 178 Fed. 5 (C. C. A., 1910), Circular No. 35, Office of the Solicitor; *Atchison, Topeka & Santa Fe Ry. Co. v. U. S.*, 178 Fed. 12 (C. C. A., 1910), Circular No. 36, Office of the Solicitor; *Missouri, Kansas & Texas Ry. Co. v. U. S.*, 178 Fed. 15 (C. C. A., 1910), Circular No. 37, Office of the Solicitor, Department of Agriculture.

DEFENSES.

After the defendant received the cattle, as covered by all the actions now before the court, it acted promptly and quickly. But that is not defensive, but such action is in mitigation.

U. S. v. St. Joseph Stock Yards Co., 181 Fed. 625 (1909). Circular No. 25, Office of the Solicitor, Department of Agriculture.

It is no defense to a charge that a railroad company or a common carrier in transporting animals has confined them knowingly and willfully more than twenty-eight hours without unloading them in violation of the act of June 29, 1906, that another carrier that participated in the transportation of the same shipment was also guilty of a violation of the statute and has forfeited and paid the penalty therefor.

U. S. v. Wabash R. R. Co., 182 Fed. 802. (C. C. A., 1910.) Circular No. 43, Office of the Solicitor, Department of Agriculture.

The record shows that the only thing the plaintiff in error did in connection with the horses was to take them from the Spokane, Portland & Seattle Railway Company, at its request, at the terminus of its tracks in Portland, with all possible speed, and hurry them for 1,300 feet over its terminal track into the yard of the Union Stock Yards Company, and there turn them loose to water, feed, and rest. This action of the plaintiff in error, so far from being in contravention of the provisions of the act of Congress in question, was, in our opinion, but aiding in giving effect to its object and purpose.

Northern Pacific Terminal Co. v. U. S., 184 Fed. 603. (C. C. A., 1911.)

It is no defense, in an action against a connecting carrier, to say that the initial carrier, which had itself violated the law on the same shipment, had been fined therefor.

U. S. v. Northern Pacific Terminal Co., 186 Fed. 947 (1911). Circular No. 53, Office of the Solicitor, Department of Agriculture.

COSTS.

On a recovery by the Government in an action for violation of the statute, in the district of Oregon, a docket or attorney's fee of \$40 is taxable against the defendant, under the provisions of Rev. St., §§ 824, 837.

U. S. *v.* Southern Pacific Co., 172 Fed. 909 (1909). Circular No. 23, Office of the Solicitor, Department of Agriculture.

SPACE IN CARS.

The evidence is uncontradicted that cattle under transportation ought to have at least $2\frac{1}{2}$ feet of space for each animal. That is the space required by the United States statute relating to shipment of cattle at sea, and obviously, it seems a small enough space to be occupied by cattle anywhere.

U. S. *v.* New York Central & Hudson River R.R. Co., 186 Fed. 541 (1911). Circular No. 48, Office of the Solicitor, Department of Agriculture.

